

No. 48841-8-II

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

**BOBBIE HANSEN A/K/A BOBBIE HANSEN
VALENTICH,**

Appellant.

Appeal from the Superior Court of Washington for Lewis County

Respondent's Brief

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I. ISSUES

- A. Did the State present insufficient evidence to sustain Hansen's conviction for Willful Refusal to Provide Information?
- B. Are Lewis County Code provisions, LCC 1.20.040(4)(b)–(c), LCC 8.45.130(4)(a), and LCC 15.05.110(b)(1)(b)–(c), unconstitutionally vague?
- C. Was Hansen's search predicated on an unlawful arrest and therefore a violation of her right to be free of warrantless searches?

II. STATEMENT OF THE CASE

Smokey Padgett is the code enforcement officer for Lewis County. 1RP 4.¹ On or about April 1, 2015, Padgett approached a property in Lewis County owned by Bobbie Hansen to investigate possible code violations. CP 42, 49. From the roadway, Padgett observed a building and a pickup truck containing a large amount of garbage. 1RP 6, 10; CP 42-43, 49.

On April 20, 2015, Padgett returned to Hansen's property with Lewis County Sheriff's Office Deputy Tim English. 1RP 5-6; CP 43, 49-50. The two were driving marked county vehicles. CP 43, 50.

¹ There are 15 volumes of verbatim report of proceedings in this matter. Only 2 volumes are consecutively paginated, although there is another volume that contains three different hearings that is consecutively paginated. The two volumes that are consecutively paginated are the Suppression Hearing, which occurred on 1/6/16 and 1/8/16. The State will cite to the Suppression Hearing as 1RP. The State will cite to all other hearing as RP and the date of the hearing.

Deputy English was in uniform, and Padgett wore his credential identifying him as an employee of Lewis County. 1RP 17-18; CP 43, 50. Both men were on duty and had authority to enforce the solid waste, septic, and building codes at that time. 1RP 5; CP 43, 50.

Padgett observed the same building and the same garbage in the pickup truck as he had seen in his previous visit. 1RP 7; CP 43, 50. Padgett believed the building was over one story tall and contained a fireplace, due to its appearance and the presence of a chimney. 1RP 8; CP 43, 50. Padgett also thought from the presence of the garbage, an RV, and dogs that someone was living in the building. 1RP 12-13; CP 43, 50.

Padgett believed a permit was required to build, own, or occupy the building. 1RP 14; 43 50. Padgett knew no one had applied for such a permit at these premises. *Id.* Padgett also knew no one had applied for a permit to store garbage on the property. *Id.* Storing garbage without a permit is a civil infraction under the solid waste code. *Id.*

Prior to April 1 of 2015, Padgett had sent a Notice of Violation to Bobbie Hansen and had received a return signed by "B. Hansen." 1RP 16; CP 43, 50. Hansen had also sent email and other communication to Padgett's department. *Id.*

Despite the prior interaction, as of April 20, 2015 neither Padgett nor Deputy English had ever met Hansen in person. 1RP 16; CP 43, 50. Deputy English and Padgett did not know if “Bobbie” was a woman or a man. *Id.* Padgett had been unable to find a photo of Bobbie Hansen through “DAPS,” a licensing database to which he had access, or “Spillman,” a local database of law enforcement contacts. RP 22-23, 38; CP 43, 50.

Deputy English and Padgett called from the roadway in front of Hansen’s property on April 20, 2015, for someone to come speak with them. 1RP 18; CP 43, 50. A woman appeared from inside the building. 1RP 18, 42; CP 43, 50. Padgett and Deputy English did not know who the woman was at the time. 1RP 43; CP 43, 50. It was learned later that it had been Hansen. CP 43, 50.

As Padgett and Deputy English began to walk up the driveway to speak to the woman, she yelled at them to get off her property, saying they had no right to be there. 1RP 42-43; CP 43, 50. Padgett and Deputy English retreated to the roadway while they attempted to speak with Hansen. 1RP 43; CP 43-44, 50. Padgett tried to explain that he was a code compliance officer and attempted to speak with Hansen about alleged code violations he observed on the property. 1RP 19, 43; CP 44, 50-51. Hansen was extremely difficult to

communicate with. 1RP 34, 43; CP 44, 51.

Padgett and Deputy English, at separate points, asked Hansen to provide her name. 1RP 21; CP 44, 51. Hansen refused to provide this information. 1RP 21; CP 44, 51. Hansen denied being the property owner. 1RP 34, 44; CP 44, 51. Eventually, Padgett asked if the woman was “Bobbie,” and she admitted that her first name was Bobbie. 1RP 20, 34, 44; CP 44, 51.

Padgett informed Hansen that, by the county code, she had to provide identifying information when asked by a code enforcement officer, and again requested her full name. 1RP 21, 43-44; CP 44, 51. The woman refused. 1RP 35, 44-45; CP 44, 51. Hansen denied committing any code violations. 1RP 44; CP 44, 51.

By Hansen’s own account, her refusal to provide her last name was sarcastic, because she was frustrated by the county contacting her about code violations that she did not believe there were violations. 1RP 76, 80; CP 44, 51.

Padgett did not believe he had enough information to cite Hansen for the civil infractions he had observed at this point. 1RP 22, 45; CP 44, 51. Padgett referred the matter to the Lewis County Prosecutor’s Office. 1RP 22; CP 44, 51.

The State charged Hansen as a Jane Doe in Lewis County District Court, alleging that she wilfully failed to provide identifying information as required by three sections of the Lewis County Code—a misdemeanor. CP 44, 51; Suppr. Ex. 5.² After finding probable cause based on an affidavit, the court issued a summons. CP 44, 51; Suppr. Ex. 6, 7.

On June 1, 2015, Deputy English returned to Hansen's property to serve the summons. 1RP 46; CP 44. Deputy English did not locate Hansen there. 1RP 46; CP 44.

In the meantime, Padgett had looked on Facebook and located a Bobbie Hansen whom he recognized, by her picture and references to the location of the property, as the Bobbie he and Deputy English had contacted. 1RP 24-25; CP 44, 51. Padgett obtained a phone number for Hansen, which he provided to Deputy English. 1RP 46; CP 44, 51.

Deputy English spoke to Hansen by phone and learned she was in Yelm. 1RP 46-47; CP 44. Deputy English asked Hansen for her address so he could bring the summons to her there. 1RP 47; CP 44. Hansen refused. 1RP 47; CP 45. Deputy English arranged to

² There are two sets of exhibits that were designated. The State will cite to the exhibits from the suppression hearing as Suppr. Ex. and the exhibit number.

meet Hansen at her property in Lewis County at a specific time, depending on her schedule, two days later to serve Hansen the summons. 1RP 47; CP 45.

Deputy English arrived at Hansen's property at the time of the arranged meeting. 1RP 47; CP 45. Deputy English waited for thirty minutes but Hansen did not show. 1RP 48; CP 45. Deputy English called and left two more messages for Hansen using the number at which he previously spoke to her. 1RP 48; CP 45. Finally, Deputy English called and left a final message detailing the date, time, and location of Hansen's arraignment in district court. 1RP 48; CP 45.

Hansen testified that she eventually received actual notice of the date, time, and location of the court hearing. CP 45. Hansen failed to appear for arraignment at District Court, and a bench warrant issued for her arrest. CP 45, 51; Suppr. Ex. 7.

On June 8, 2015, Dep. English located Hansen at her property in Lewis County. CP 45, 51. As Deputy English placed Hansen under arrest, she grabbed something from her pocket and threw it away from them. CP 45, 51. Deputy English retrieved the thrown item. CP 45, 51. It was a small glass tube containing methamphetamine. CP 45, 51.

Hansen was charged in Lewis County Superior Court with Possession of Methamphetamine on June 9, 2015. CP 3-4. On September 3, 2015 the State filed a second amended information, with Count I: Possession of Methamphetamine, and Count II: Willful Refusal to Provide Information. CP 10-11. There was a CrR 3.5/3.6 hearing held. 1RP. The State prevailed and findings of fact and conclusions of law were entered. CP 42-48.

There was a stipulated trial. RP (1/12/16) 3-21. The trial court found Hansen guilty of both counts. RP (1/12/16) 20-21; CP 49-53. Hansen timely appeals her convictions. CP 90-99.

The State will supplement the facts as necessary throughout its argument below.

III. ARGUMENT

A. THE STATE PRESENTED SUFFICIENT EVIDENCE TO SUSTAIN THE TRIAL COURT'S FINDING THAT HANSEN COMMITTED WILLFUL REFUSAL TO PROVIDE INFORMATION.

Hansen argues the State did not present sufficient evidence to sustain the trial judge's verdict of guilty for Count II: Willful Refusal to Provide Information. Brief of Appellant 18-21. Hansen asserts that by simply giving her first name, in conjunction with other information provided at different times to Lewis County Officials, the State cannot show Hansen willfully refused to provide information. *Id.* The State

presented sufficient evidence to sustain the trial judge's guilty verdict for Willful Refusal to Provide Information.

1. Standard Of Review.

Sufficiency of evidence following a bench trial is reviewed for “whether substantial evidence supports the challenged findings of fact and whether the findings support the trial court’s conclusions of law.” *State v. Smith*, 185 Wn. App. 945, 956, 344 P.3d 1244 (2015) (citation omitted). Unchallenged findings are verities on appeal. *State v. Lohr*, 164 Wn. App. 414, 418, 263 P.3d 1287 (2011).

2. The Trial Court’s Conclusion That Hansen Willfully Failed To Provide Identifying Information Is Supported By The Evidence.

The State is required under the Due Process Clause to prove all the necessary elements of the crime charged beyond a reasonable doubt. U.S. Const. amend. XIV, § 1; *In re Winship*, 397 U.S. 358, 362-65, 90 S. Ct 1068, 25 L.Ed.2d 368 (1970); *State v. Colquitt*, 133 Wn. App. 789, 796, 137 P.3d 893 (2006). An appellant challenging the sufficiency of evidence presented at a trial “admits the truth of the State’s evidence,” and all reasonable inferences therefrom are drawn in favor of the State. *State v. Goodman*, 150 Wn.2d 774, 781, 83 P.2d 410 (2004). When examining the sufficiency of the evidence, circumstantial evidence is just as reliable

as direct evidence. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

“Substantial evidence is evidence sufficient to persuade a fair-minded, rational person that the findings are true.” *Smith*, 185 Wn. App. at 956 (citation omitted). The reviewing court defers to the trier of fact on issues regarding witness credibility, conflicting testimony and persuasiveness of the evidence presented. *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004).

Hansen challenged five of the findings of fact: 1.10, 1.11, 1.13, 1.19, and 1.20. The remaining findings of fact are unchallenged and therefore, they are all verities on appeal. *Lohr*, 164 Wn. App. at 418. All challenged findings of fact are direct duplicates of the stipulation of what the State’s witnesses would testify to in the Stipulated Facts signed by the parties for the bench trial. CP 36-41, 50-52. The trial court is tasked with resolving issues regarding conflicting testimony and the credibility of the witnesses. *Thomas*, 150 Wn.2d at 874-75. Therefore, while Hansen’s stipulated testimony may contradict some of the Findings of Fact, the trial court is permitted to resolve the conflicts in favor of the stipulated testimony of the State’s witnesses. See CP 36-41. There is sufficient evidence to support the challenged findings of fact.

To convict Hansen of Willful Refusal to Provide Information the State was required to prove, beyond a reasonable doubt, that on or about April 20, 2015, in Lewis County, Washington, that Hansen, being allegedly or apparently in violation of

- (1) Lewis County codes or ordinances related to building, zoning, safety, or environmental health, and/or quality life that is specifically referenced in Chapter 1.2 LCC; and/or
- (2) Chapter 8.45 LCC related to solid waste regulation; and/or
- (3) Chapter 15.05 LCC related to building codes,

was lawfully requested to provide information identifying herself by an authorized official, and Hansen willfully refused to provide that information. LCC 1.20.040(4)(c); LCC 8.45.130(4)(a); LCC 15.05.110(b)(1)(5); CP 11.

The crux of Hansen's sufficiency of evidence argument is that Hansen did not willfully refuse to give her identifying information because, when Padgett asked if her name was Bobbie, given the previous email correspondence, she agreed. Brief of Appellant 19-20. This argument is akin to stating a person did not give a false statement to law enforcement because they had previously given a truthful statement to law enforcement in the past. The fact Hansen had previously, over an email, given her name, does not meet the

statutory requirements of the Lewis County Code provisions requiring her to identify herself when requested by an authorized official. See LCC 1.20.040(4)(b); LCC 8.45.130(4)(a); LCC 15.050.110(b)(1)(c).³ The previous circumstances in this case were particularly unhelpful because they did not involve face-to-face contact that would help the officials know whether Bobbie was a man or a woman, let alone the person they were speaking to.

Each of the Lewis County Code provisions require an apparent code violator to provide identifying information upon request of an authorized official. *Id.* Willful refusal to provide identifying information when requested is a misdemeanor. LCC 1.20.040(4)(b)–(c); LCC 8.45.130(4)(a); LCC 15.05.110(b)(1)(b)–(c). “Upon request” is the key in the present case. Hansen did not produce identifying information for Deputy English or Padgett when they requested it from her. 1RP 21, 34, 43-45; CP 44-45, 51.

To comply with the Lewis County Code Hansen must give identifying information upon request, i.e., when the code enforcement officer or the deputy sheriff asked for it. The purpose for this requirement is obvious, if a person is an alleged code violator,

³ The Lewis County Code provisions are contained in an appendix attached to Hansen’s opening brief, Appendix A, in compliance with RAP 10.4(c). The State is relying upon this Appendix as it does not wish to be duplicative.

the authorized individual needs the identifying information to either cite the individual or properly identify and refer the individual for other services, future compliance checks, or possible criminal charges.

Padgett testified,

I asked her -- I told her I needed her name, I needed to talk to the property owner, I needed to know what her name was, identification so I would know if she was the property owner to discuss the code enforcement issues. She didn't want to tell me anything. She just kept telling me get off her property, I had no legal right to be there and I had no authority to be there.

1RP 20. Deputy English explained that when Padgett asked Hansen for her name, "They said that they didn't have to identify themselves and just reiterated that we had no authority there." 1RP 44. Deputy English stated, "[a]fter Mr. Padgett got no response, then I attempted to reason with the female [,Hansen,] that was there and did not get a name as well." 1RP 44.

Hansen never gave identifying information to Padgett or Deputy English. She did acknowledge her first name was "Bobbie" when eventually Padgett asked Hansen if that was her name. 1RP 20, 43. Yet, Hansen, even after acknowledging that Bobbie was her name did not admit the property belonged to her. 1RP 20.

Authorized officials believed Hansen was in violation of three provision of the Lewis County Code. Hansen, when requested by two

different Lewis County authorized officials, willfully failed to provide identifying information by refusing to give her complete name, or any name for that matter. The trial court determined Hansen's stipulated testimony was not credible. See CP 49-53. The trial judge is the sole determiner of credibility and this Court does not engage in credibility determinations on review. *Thomas*, 150 Wn.2d at 874-75. When viewing the evidence in the light most favorable to the State, with all reasonable inferences drawn in favor of the State, Hansen did not provide identifying information upon request. *Goodman*, 150 Wn.2d at 781. There was sufficient evidence presented that Hansen committed Willful Refusal to Provide Information.

B. THE CONTESTED PORTIONS OF THE LEWIS COUNTY CODE ARE NOT UNCONSTITUTIONAL AS APPLIED TO HANSEN.

Hansen attempts to bring a vagueness challenge to the Lewis County statutes of which she was convicted. The challenge appears to be both facial and as-applied. Brief of Appellant 21-32. Hansen can only go forward with her vagueness challenge of the Lewis County Code provisions as-applied. The Lewis County Code provisions the State alleged Hansen violated are constitutional as-applied to Hansen.

1. Standard Of Review.

Constitutional challenges are reviewed de novo. *Lummi Indian Nation v. State*, 170 Wn.2d 247, 257-58, 241 P.3d 1220 (2010).

2. The Contested Provisions Of The Lewis County Code Are Constitutional As-Applied To Hansen.

A statute is presumed constitutional and it is the burden of the party attacking the statute to prove the statute is unconstitutional beyond a reasonable doubt. *City of Bellevue v. Lee*, 166 Wn.2d 581, 585, 210 P.3d 1011 (2010), citing *Island County v. State*, 135 Wn.2d 141, 146, 955 P.2d 377 (1998). A vagueness challenge to a statute or county code, which does not involve First Amendment rights, is evaluated in the light of the facts of that particular case, not on the face of the statute. *Spokane v. Douglass*, 115 Wn.2d 171, 182-83, 795 P.2d 693 (1990). “[T]he ordinance must be judged as applied. Accordingly, the ordinance is tested for unconstitutional vagueness by inspecting the actual conduct of the party who challenges the ordinance and not by examining hypothetical situations at the periphery of the ordinance's scope.” *Douglass*, 115 Wn.2d at 182-83.

Therefore, to prevail, Hansen must show beyond a reasonable doubt that the ordinances did not provide an ordinary

person in her shoes with sufficient clarity as to what she had to do, or that it did not provide ascertainable standards to protect against arbitrary enforcement. *State v. Maciolek*, 101 Wn.2d 259, 263-64, 676 P.2d 996 (1984). Hansen cannot meet this burden.⁴

When an authorized official requests identifying information from an apparent or alleged violator of the code, the alleged or apparent violator must provide it, and willful failure to do so is a misdemeanor:

Upon request of the authorized official, the person alleged or apparently in violation of this chapter shall provide information identifying themselves. Willful refusal to provide information identifying a person as required by this section is a misdemeanor.

LCC 1.20.040(4)(b)–(c) (for septic violations⁵).

Upon request of the authorized representative of the department, the person allegedly or apparently in violation of these regulations shall provide information identifying themselves. Willful refusal to provide information identifying a person as required by this section is a misdemeanor.

LCC 8.45.130(4)(a) (for solid waste violations).

⁴ Hansen’s appellate counsel incorrectly asserts that Hansen brought an as-applied challenge in the trial court. Trial counsel’s briefing, which Hansen has not designated (although the State will do so in a supplemental designation), make it clear she was attempting a facial challenge of the code provisions. This is further evidenced by trial counsel’s statement during argument at the suppression hearing, “So our position is just a statute requiring a person to provide identifying information is vague on its face.” 1RP 104-05. The State brought it to the trial court’s attention this must be an as-applied challenge. See 1RP 92; CP 22.

⁵ See LCC 1.20.040(2)(a) (applying the quoted section to health codes that cross-reference it); LCC 8.40.370(5) (cross-referencing this section for septic violations).

Upon request of the building official, the person alleged or apparently in violation of this ordinance shall provide information identifying themselves. Willful refusal to provide information identifying a person as required by this section is a misdemeanor.

LCC 15.05.110(b)(1)(b)–(c) (for building violations).

Hansen asserts identification statutes are “notoriously vague” and cites to *Kolendar v. Lawson*, 461 U.S. 352, 103 S. Ct. 1855, 75 L. Ed. 2d 903 (1983) to support this premise. The State acknowledges that “stop and identify” statutes have sometimes been defeated by vagueness challenges, particularly when connected to old-style vagrancy laws that had no definitive standards for when such a stop would be authorized. See, e.g., *Kolendar*, 461 U.S. 352; *Papachristou v. Jacksonville*, 405 U.S. 156, 167-171, 92 S. Ct. 839, 31 L. Ed. 2d 110 (1972). In *Kolendar*, the U.S. Supreme Court invalidated an ordinance that required one “to identify himself and to account for his presence when requested by any peace officer so to do” by providing “credible and reliable” information. *Kolendar*, 461 U.S. at 353 n.1, 357. There was no standard for determining credibility and reliability, and therefore the statute vested unconstitutionally vague discretion in the peace officer. *Id.* at 358-60.

More recently, the United States Supreme Court upheld a provision requiring that a person detained by a peace officer on

reasonable suspicion of criminal activity “shall identify himself.” *Hiibel v. Sixth Judicial Dist. Court*, 542 U.S. 177, 181-82, 124 S. Ct. 2451, 159 L. Ed.2d 292 (2004). The actual challenge rejected by the Court was under the Fourth and Fifth Amendments. *Id.* at 185-91. But in dicta, the Court considered the statute in light of *Kolendar* and *Papachristou* and noted it was not void for vagueness: it had a definite standard for when it applied (a stop on reasonable suspicion of a crime), and it required only that the person provide their name, not amorphous “credible and reliable” information. *Id.* at 184-85. *Hiibel*’s analysis was adopted wholesale by our Court of Appeals, *State v. Steen*, 164 Wn. App. 789, 809-11, 265 P.3d 901 (2011), and has been cited repeatedly by our Supreme Court, *State v. Williams*, 171 Wn.2d 474, 484, 251 P.3d 877 (2011); *State v. Koslowski*, 166 Wn.2d 409, 421, 209 P.3d 479, (2009); *State v. Ohlson*, 162 Wn.2d 1, 14, 168 P.3d 1273 (2007).

The ordinances here are as definite as the one upheld in *Hiibel*. First, each requires probable cause that a violation of the appropriate code has been violated, akin to the reasonable suspicion of a crime requirement in *Hiibel*. Second, each requires “information identifying” the violator, which is essentially the same phrase at issue in *Hiibel*. The Court should construe our ordinances to require the

minimum necessary to identify someone in our society—one's full name—which *Hiibel* held to be sufficiently definite. See *State v. Rice*, 174 Wn.2d 884, 899, 279 P.3d 849 (2012) (requiring that statutes be construed to preserve their constitutionality). Finally, failure to identify oneself is not proscribed unless it is willful, which was the same mens rea at issue in *Hiibel*. *Hiibel*, 542 U.S. at 181. As a result, because the *Hiibel* ordinance was constitutional, the ones at issue in this case are also constitutional.

The Lewis County Code provisions allow for certain authorized persons to investigate and enforce code violations. As applicable to septic, solid waste, and building code violations, those people include a deputy sheriff, LCC 1.20.040(3)(a), a representative of the county health department, LCC 1.20.040(3)(a) & 8.45.130(4)(a) & 8.40.350(1)-370(5), and a building official authorized to enforce the building code, LCC 15.05.110(b)(1)(a).

Hansen argues the Lewis County Code Provisions are vague as-applied to Hansen because there is not sufficient notice to inform Hansen of what constitutes willful refusal to provide information identifying a person. Brief of Appellant 28-32. In particular, Hansen argues the statute requires a subjective interpretation of enforcing officials as to what amount of information is sufficient to identify. *Id.*

at 29. Hansen further asserts that the failure to provide standards allow the police and fact-finders to determine what conduct makes a person not in compliance. *Id.* Hansen appears to argue that the ordinance's failure to provide guidance with the exact amount of information that must be found to not be in compliance makes the ordinance vague, that the ordinances must spell out that a person must give their first and last name if that is what is required. *Id.* at 29-32.

As-applied in this case, the provisions from the Lewis County Code are not vague and are constitutional. Padgett and Deputy English contacted Hansen on April 20, 2015 on official county business, regarding possible code violations. 1RP 5-8, 14, 43, 50. Padgett and Deputy English were identifiable as county officials. 1RP 17-18; CP 43, 50. Upon contacting Hansen, Padgett attempted to explain to her that he was the code compliance officer. 1RP 19, 43; CP 44, 50-51. Padgett attempted to explain to Hansen he was there to speak with her about alleged code violations he observed on the property. *Id.*

Padgett and Deputy English, at separate points in their contact with Hansen, asked Hansen to provide her name. 1RP 21; CP 44, 51. Hansen refused. *Id.* Hansen never gave her name, but

did acknowledge her first name was “Bobbie” when Padgett asked. 1RP 20, 34, 44; CP 44, 51. Padgett also informed Hansen that pursuant to the county code, she must provide identifying information when asked by a code enforcement officer, and requested again for Hansen to give her full name. 1RP 21, 43-44; CP 44, 51. Hansen again refused to give her full name. 1RP 35, 44-45.

The ordinances in question, LCC 1.20.040(4)(b)–(c), LCC 8.45.130(4)(a), and LCC 15.05.110(b)(1)(b)–(c) make it abundantly clear under these circumstances that Hansen had a duty to provide Padgett and/or Deputy English with her identifying information, i.e., her full name, and Hansen willfully failed to do so. To argue the statute is vague because Hansen had previously given her full name in email correspondence and then acknowledged “Bobbie” as her first name when Padgett asked could be viewed as complying with the statute is a disingenuous reading of the Lewis County Code provisions. Hansen fails repeatedly to acknowledge the language which requires her to identify herself “upon request”, something Hansen never voluntarily did throughout her conversation with Lewis County Officials.

Hansen also fails to acknowledge to this Court the trial court’s narrow interpretation of the Lewis County Code provisions as-

applied to her. CP 46. The trial court adopted a limiting construction of this statute that “alleged or apparently in violation of this chapter” required probable cause of a violation. *Id.* A court may construe a statute in order to preserve its constitutionality. See *State v. Rice*, 174 Wn.2d 884, 899, 279 P.3d 849 (2012). There is nothing vague about the ordinances as-applied to Hansen and this Court should reject Hansen’s argument and affirm the trial court and her convictions.

C. THE SEARCH OF HANSEN WAS A LAWFUL SEARCH INCIDENT TO ARREST.

Hansen argues she did not violate the county ordinances, and if she did, the portions she allegedly violated are unconstitutional, therefore her arrest was not lawful. Hansen’s arrest was pursuant to a lawfully obtained warrant. This Court should affirm her conviction for Possession of Methamphetamine.

1. Standard Of Review.

Constitutional challenges are reviewed de novo. *Lummi Indian Nation v. State*, 170 Wn.2d 247, 257-58, 241 P.3d 1220 (2010).

2. The Contested Provisions Of The Lewis County Code Are Constitutional As-Applied To Hansen.

Citizens have the right to not be disturbed in their private affairs except under authority of the law. U.S. Const. amend IV;

Const. art. I, § 7. The right to privacy in Washington State is broader than the right under the Fourth Amendment of the United States Constitution. Const. art. I, § 7; *State v. Eisfeldt*, 163 Wn.2d 628, 634-35, 185 P.3d 580 (2008). Washington State places a greater emphasis on privacy and recognizes individuals have a right to privacy with no express limitations. Const. art. I, § 7; *State v. Ladson*, 138 Wn.2d 343, 348, 979 P.2d 833 (1999). Generally, a search is not reasonable unless it is based on a warrant issued upon probable cause. *Skinner v. Ry Labor Executives' Ass'n*, 489 U.S. 602, 619, 109 S. Ct. 1402, 103 L. Ed.2d 639 (1989).

The Fourth Amendment requires that “no warrants shall issue, but upon probable cause, supported by oath or affirmation and particularity describing the place to be searched, and the persons or things to be seized.” The warrant requirement places a layer of protection for a citizen against unlawful searches and seizures by government officials. *Steagald v. United States*, 451 U.S. 204, 212, 101 S. Ct. 1642, 68 L. Ed. 2d 38 (1981). “The purpose of a warrant is to allow a neutral judicial officer to assess whether the police have probable cause to make an arrest or conduct a search.” *Steagald*, 451 U.S. at 212.

As argued above, the Lewis County Codes were not unconstitutional as-applied to Hansen. The warrant in this matter was lawfully issued upon probable cause, after notice sufficient to satisfy due process. Suppr. Ex. 5, 6, 7, 8, 9, 10. The State filed an affidavit on which the district court found probable cause before even issuing a summons. Suppr. Ex. 6, 7. The affidavit established sufficient facts from which a reasonable person would consider Jane Doe to have committed the crime of willful failure to identify. Suppr. Ex. 6; See *State v. Hatchie*, 161 Wn.2d 390, 404, 166 P.3d 698 (2007).

Therefore, when Deputy English arrested Hansen it was on a lawfully obtained warrant for her failure to appear at a hearing. Deputy English executed the arrest warrant on Hansen. 1RP 49. Hansen was not initially cooperative. 1RP 49-50. While in the process of arresting Hansen, she grabbed inside one of her pants pockets and threw out a small glass object. 1RP 51. Deputy English retrieved the glass object after securing Hansen. 1RP 51. The glass tube contained methamphetamine. CP 38.

Deputy English was lawfully arresting Hansen when she discarded the glass tube containing methamphetamine. It was not a

warrantless search. This Court should affirm Hansen's conviction for Possession of Methamphetamine.

IV. CONCLUSION

The State presented sufficient evidence to sustain Hansen's conviction for Willful Refusal to Provide Information. Lewis County Code provisions, LCC 1.20.040(4)(b)–(c), LCC 8.45.130(4)(a), and LCC 15.05.110(b)(1)(b)–(c), are constitutional as-applied to Hansen. Finally, Hansen's search was predicated on a lawful arrest and therefore the methamphetamine located upon Hansen's arrest by the deputy sheriff was not an unlawful search. This Court should affirm the trial court's rulings and Hansen's convictions.

RESPECTFULLY submitted this 7th day of December, 2016.

JONATHAN L. MEYER
Lewis County Prosecuting Attorney



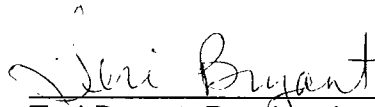
by: _____
SARA I. BEIGH, WSBA 35564
Attorney for Plaintiff

**COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II**

| | |
|---|--|
| STATE OF WASHINGTON, Respondent, vs. BOBBIE HANSEN a/k/a BOBBIE HANSEN VALENTICH, Appellant. | No. 48841-8-II DECLARATION OF SERVICE |
|---|--|

Ms. Teri Bryant, paralegal for Sara I. Beigh, Senior Deputy Prosecuting Attorney, declares under penalty of perjury under the laws of the State of Washington that the following is true and correct: On December 7, 2016, the appellant was served with a copy of the **Respondent's Brief** by email via the COA electronic filing portal to Peter Tiller, attorney for appellant, at the following email addresses: Ptiller@tillerlaw.com and Kelder@tillerlaw.com.

DATED this 7th day of December, 2016, at Chehalis, Washington.



Teri Bryant, Paralegal
Lewis County Prosecuting Attorney Office

LEWIS COUNTY PROSECUTOR

December 07, 2016 - 2:20 PM

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